116-585

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 1009.

WILLIAM H. SANDS, PLAINTIFF IN ERROR,

vs.

E. G. EDMUNDS, TREASURER OF THE COUNTY OF FAUQUIER, VIRGINIA.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

FILED OCTOBER 5, 1885.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 To the honorable judges of the Supreme Court of the United States.

Your petitioner, William H. Sands, respectfully represents that he is aggrieved by a judgment pronounced against him by the supreme court of appeals for the State of Virginia on the 11th day of September, 1885. He presents herewith a transcript of the record, and prays for a writ of error, and that said judgment may be reversed.

WM. H. SANDS,
By WM. L. ROYALL,
His Att'y.

2 *Ex Parte* WM. H. SANDS.

To the honorable judges of the supreme court of appeals for the State of Virginia:

Your petitioner, Wm. H. Sands, respectfully represents that he is aggrieved by a judgment pronounced against him by the circuit court of Fauquier county on the 8th day of September, 1885.

A transcript of the record of said judgment is presented herewith, and your petitioner prays that his petition for a mandamus contained therein may be read by the court for ascertaining the facts of his case. Your petitioner prays that an appeal from said judgment may be allowed him, and that it may be reviewed and reversed.

WM. H. SANDS,
By Counsel.

I, William L. Royall, an attorney, practising in the court of appeals of Virginia, am of opinion that the judgment complained of in the foregoing petition should be reversed.

WM. L. ROYALL.

3 VIRGINIA:

Pleas at the court-house of Fauquier county, before the circuit court of said county, on Tuesday, the 8th day of September, 1885:

This day W. H. Sands, the petitioner, presented his petition to the court praying for a mandamus *nisi*, commanding E. G. Edmonds, treasurer of the county of Fauquier, to show cause why a peremptory mandamus should not issue commanding him to receive a certain coupon described in said petition for identification and verification. Upon consideration whereof it is ordered that the prayer of said petition be denied, and that said petition be dismissed. And at the instance of the petitioner's counsel it is certified that, in the record and at the hearing, there was drawn in question the validity of the act of the General Assembly of Virginia, approved February 7th, 1884, entitled "An act to regulate the granting of licenses for the exercise of any privilege," and the 12th section of an act of the General Assembly of Virginia, approved March 15, 1884, entitled "An act to provide for the assessment of taxes on persons, property, &c.," upon the ground that said first-mentioned act and said last-mentioned section are repugnant to section ten of article one of the Constitution of the United States,

and that the decision of the court is in favor of the validity of said act and section and against the right claimed under the Constitution of the United States.

4 The petition mentioned in the foregoing order is in the words and figures following:

"In the Circuit Court of Fauquier.

"To the Hon. James Keith, judge of the circuit court:

"The petition of Wm. H. Sands respectfully represents that he is an attorney-at-law, regularly and duly licensed to practice law in the courts of the State of Virginia according to the laws of said State.

"That on the 8th day of September, 1885, he tendered to E. G. Edmonds, who is the treasurer of the county of Fauquier, and the officer whose duty it is to collect all license taxes due said State in said county, in payment of his license tax as an attorney-at-law for the ensuing year, fifteen dollars in lawful money of the United States and seventy-five cents in like money for the commission of the revenue's fee, in compliance with the provisions of the acts of Assembly, approved February 7th, 1884, entitled 'An act to regulate the granting of licenses for the exercise of any privilege.'

"That, at the same time, he tendered to the said treasurer a certain coupon for fifteen dollars, which coupon was cut from a bond issued by the State of Virginia under the provisions of an act of her General Assembly, approved March 30, 1871, entitled 'An act to provide for the funding & payment of the public debt.'

"That said coupon was overdue and past maturity and bore upon its face the contract of the State of Virginia that it should be received in payment of all taxes, debts, and demands due said State.

5 "That, at the same time, he demanded the said treasurer should receive said coupon along with said lawful money for the purpose of identification and verification, in manner and form as required by an act of the General Assembly of the State of Virginia, approved January 14, 1882, entitled 'An act to prevent fraud upon the Commonwealth and holders of her securities in the collection of her revenues.'

"That the said treasurer received said lawful money tendered by your petitioner, and gave him the certificate provided for in said act of Feb'y, 7, 1884, but he refused to receive said coupon as demanded by your petitioner and he refused to receive it for any purpose whatever. Your petitioner claims that he had the right to have said treasurer receive said coupon and deliver the same to the judge of the county court of Fauquier, and that it was your petitioner's right to prove said coupon before a jury in said court and thereupon to have his said money returned to him, and that said treasurer did your petitioner a great wrong and injury when he refused to receive said coupon.

"That he refused to receive same because said act of Feb'y 7, 1884, requires all license taxes to be paid in money only and not in

coupons, and because 112th section of an act of the General Assembly of Virginia, approved March 15, 1884, entitled 'An act to provide for the assessment of taxes on persons, property, incomes, &c.,' requires all license taxes to be paid in money only and not it coupons.

6 "That both of said acts in this particular are repugnant to section 10 of article 1 of the Constitution of the United States, and therefore null and void. That your petitioner has not been licensed to practice law so long as five years.

"Your petitioner therefore prays that a mandamus *nisi* may be issued commanding the said E. G. Edmonds, treasurer aforesaid, to show cause why a peremptory mandamus shall not issue commandhim to receive said coupon, and deliver it to the judge of the county court for identification and verification, according to the terms and provisions of said act of January 14, 1882.

"And your petitioner will ever pray, &c.

"WM. H. SANDS,
"*By Counsel.*

"SANDS & BRYAN, *P. Q.*

"STATE OF VIRGINIA,
"*Fauquier County,* } *To wit:*

"This day personally appeared before me, in my county aforesaid, W. H. Sands, and made oath that the statements made in the annexed petition, so far as made from his own knowledge, are true, and so far as made upon information derived from others he believes the same to be true.

"Given under my hand this 8th day of September, 1885.

"JNO. R. TURNER,
"*Clerk of Fauquier Circuit Court.*"

From the record. A copy.
Teste: JNO. R. TURNER, *Clerk.*

The fee for this copy is $1.00.

J. R. TURNER, *Cl'k.*

7 VIRGINIA:

At a supreme court of appeals of Virginia, held at the court-house of Augusta county, at Staunton, on Friday, the 11th day of September, 1885.

Ex Parte W. H. SANDS.

Upon a petition for an appeal from the judgment of the circuit court of Fauquier county of September 8, 1885, rendered upon a petition of said W. H. Sands, praying for a mandamus *nisi* against E. G. Edmonds, treasurer of Fauquier county, in the matter of the refusal of said treasurer to receive a certain coupon for identification and verification and in payment of said petitioner's license tax as a lawyer.

Upon consideration whereof the court is of opinion that the prayer of the petition be denied, and the appeal be not granted.

A copy.

Teste: JAMES B. DORMAN, *Clerk.*

Fee for copy, 25c.

8 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of appeals for the State of Virginia, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Wm. H. Sands, plaintiff, and E. G. Edmunds, defendant, wherein was drawn in question the validity of a statute of or an authority exercise under said State, on the ground of their being repugnant to the Constitution & laws of the United States, and the decision was in favor of such their validity, & wherein was drawn in question the construction of a clause of the Constitution, or of a treaty or statute
9 of or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, a manifest error hath happened to the great damage of the said Wm. H. Lands, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 12th day of September, in the year of our Lord one thousand eight hundred and eighty-five.

[Seal United States Circuit Court, Eastern District of Virginia.]

M. F. PLEASANTS,
Clerk of the Circuit Court of the United States for the East. Dist. of Virginia.

Allowed by—

JOHN M. HARLAN,
Associate Justice, Supreme Court of the U. S.

10 VIRGINIA:

In the Clerk's Office of the Supreme Court of Appeals of Virginia.

I, James B. Dorman, clerk of the supreme court of appeals of Virginia, do hereby certify that a copy of the within writ is on file in my office.

Given under my hand this 26th day of September, 1885.

JAMES B. DORMAN,
Clerk Supreme Court of Appeals of Virginia at Staunton.

[Endorsed:] *Ex parte.* Lands.

11 The United States of America to E. G. Edmunds, treasurer of the county of Fauquier, Virginia, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of appeals for the State of Virginia, at Staunton, Va., wherein Wm. H. Sands is plaintiff in error, and you are defendant in error, to show cause, if any there be, why a judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 12th day of September, in the year of our Lord one thousand eight hundred and eighty-five.

JOHN M. HARLAN,
Associate Justice Supreme Court of the U. S.

12 VIRGINIA:

In the Clerk's Office of the Supreme Court of Appeals of Virginia, at Staunton.

I, James B. Dorman, clerk of the supreme court of appeals of Virginia, at Staunton, do hereby certify that a copy of the within citation is on file in my office.

Given under my hand this 26th day of September, 1885.

JAMES B. DORMAN,
Clerk Supreme Court of Appeals of Virginia, at Staunton.

On this 15th day of September, in the year of our Lord one thousand eight hundred and eighty-five, personally appeared E. E. Gray before me, the subscriber, a notary public for the county of Fauquier, State of Virginia, and makes oath that he delivered a true copy of the within citation to E. G. Edmunds, treasurer of Fauquier county, Virginia, on the 15 day of September, 1885.

E. E. GRAY.

Sworn to and subscribed the 15th day of September, A. D. 1885.

[Seal C. M. White, Notary Public, Warrenton, Fauquier Co., Va.]

C. M. WHITE,
Notary Public.

13 Know all men by these presents that we, William L. Royal and Rich'd W. Maury, are held and firmly bound unto E. G. Edmonds, treasurer of Fauquier county, Virginia, in the full and just sum of five hundred dollars, to be paid to the said E. G. Edmonds, certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this twelfth day of September, in the year of our Lord one thousand eight hundred and eighty-five.

Whereas lately at a supreme court of appeals for the State of Virginia, held at Staunton, in a suit depending in said court between Wm. H. Sands, plaintiff in error, and the said Edmonds, judgment was rendered against the said Sands; and the said Sands having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the said judgment in the aforesaid suit, and a citation directed to the said Endmonds citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now the condition of the above obligation is such that if the said Sands shall prosecute his writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—

WM. L. ROYAL. [SEAL.]
RICH'D W. MAURY. [SEAL.]

Approved by—

JOHN M. HARLAN,
Associate Justice Supreme Court of the United States.

14 VIRGINIA:

In the Clerk's Office of the Supreme Court of Appeals of Virginia.

I, James B. Dorman, clerk of the supreme court of appeals of Virginia, at Staunton, do hereby certify that the bond of which the within is a copy is on file in my office.

Given under my hand, this 26th day of September, 1885.

JAMES B. DORMAN,
Clerk Supreme Court of Appeals of Virginia.

15 *Ex Parte* WM. H. SANDS.

Assignment of Error.

The plaintiff in error assigns for error the action of the supreme court of appeals of the State of Virginia in refusing him an appeal from and reversing the judgment of the circuit court of Fauquier county, and prays a reversal of same.

WM. L. ROYALL,
For Plaintiff in Error.

16 STATE OF VIRGINIA:

Clerk's Office, Supreme Court of Appeals of Virginia, at Staunton.

I, James B. Dorman, clerk of the supreme court of appeals of the State of Virginia, at Staunton, in obedience to the mandate of a writ of error awarded by the Honorable Morrison R. Waite, Chief Justice of the United States, dated the 12th day of September, 1885, do hereby certify that the foregoing manuscript contains a true transcript of the record in the case of Wm. H. Sands, appellant, against E. G. Edmonds, appellee, as the same remains on file in the clerk's office of the said supreme court of appeals.

I further certify that the supreme court of appeals of Virginia is the highest court of law or equity in the State of Virginia in which a decision can be had.

In testimony whereof I have hereunto subscribed my name as clerk of the said supreme court of appeals of Virginia, at Staunton (there being no official seal of said court at its place of session here), this 26th day of September, 1885.

JAMES B. DORMAN,
Clerk of the Sup. Ct. of Appeals of Va., at Staunton.

I herewith return the original writ of error awarded in this cause, the citation with service thereon endorsed, and a copy of the appeal bond on file in my office.

JAMES B. DORMAN, *Clerk.*

Clerk's fees for record, certificates, postage, &c., $5.61.
Paid.

17 STATE OF VIRGINIA, *City of Richmond,* } *To wit:*

I, George K. Taylor, clerk of the supreme court of appeals of Virginia, at its place of session at Richmond, do hereby certify that James B. Dorman, Esquire, is the clerk of the said court at its place of session, at Staunton, and that his signature to the foregoing certificate is genuine.

In testimony whereof I hereto set my hand and annex the seal of said court, this 29th day of September, 1885.

[Seal Supreme Court of Appeals of Virginia, Richmond.]

GEO. K. TAYLOR,
Clerk Supreme Court of Appeals at Richmond.

Endorsed on cover: Virginia supreme court of appeals. No. 1009. William H. Sands, plaintiff in error, *vs.* E. G. Edmunds, treasurer of the county of Fauquier, Virginia. Filed October 5, 1885.

Supreme Court of the United States.

OCTOBER TERM, 1885.

No. 1009.

WILLIAM H. SANDS,
Plaintiff in Error,

AGAINST

E. G. EDMUNDS, Treasurer of Fauquier County, Virginia.

STATEMENT.

This case was an application for a writ of *mandamus, nisi*, against the defendant treasurer, to show cause why a peremptory mandamus should not issue, commanding him to receive a coupon tendered by the plaintiff in error in payment of his license tax as an attorney at law, and deliver the same to the County Judge for identification and verification.

The petition (*Record, fols.* 3–7) set forth that the plaintiff in error is an attorney at law, and tendered to the defendant, in payment of a license tax required by the statute of Virginia, a coupon of the tax-receivable bonds of Virginia, together with a like amount of current money.

That the defendant received the said money, but refused to receive the said coupon.

The Court, upon consideration of the petition alone, denied the prayer of the petitioner and dismissed the same (*fol.* 3).

From this decision the plaintiff in error prayed an appeal to the Supreme Court of Appeals, which was refused (*fols.* 3–10).

To review this decision the present writ of error is brought in this Court.

ARGUMENT.

The provisions of the statutes of Virginia, which are involved here, are as follows:

"Every attorney-at-law, who has been licensed for less than five years, shall pay fifteen dollars; and all attorneys who have licensed and practiced for five years and more, twenty-five dollars; provided that no attorney-at-law shall be required to pay more than fifteen dollars whose receipts are less than five hundred dollars per annum; provided further, no attorney licensed under this act shall be allowed to bring suit against the Commonwealth or any treasurer or collector of taxes for the recovery of money for coupons tendered for taxes, unless he take out a special license therefor for which privilege he shall pay a specific license tax in addition to the tax required under this section of two hundred and fifty dollars."

Acts of Va., 1884, p. 596.

"1. *Be it enacted by the General Assembly of Virginia*, that whenever any taxpayer or his agent, shall tender to any person whose duty it is to receive taxes, debts, or demands due the Commonwealth, any papers or instruments in print, writing or engraving, purporting to be coupons detached from bonds of the Commonwealth issued under the act of eighteen hundred and seventy-one, entitled an act to fund the public debt, in payment of any such taxes, debts and demands, the person to whom such papers are tendered shall receive the same, giving the party tendering a receipt stating that he has received the same for the purposes of identification and verification.

"2. He shall at the same time require such taxpayer to pay his taxes in coin, legal-tender notes, or national bank bills, and upon payment give him a receipt for the same. In case of a refusal to pay, the taxes due shall be collected as all other delinquent taxes are collected.

"3. He shall mark each paper as coupons so received, with the initials of the taxpayer from whom received, and the date of receipt, and shall deliver the same, securely sealed up, to the Judge of the County Court of the County or Hustings Court of the city in which such debts or demands are payable. The tax-

payer shall thereupon be at liberty to file his petition in said County Court against the Commonwealth. A summons to answer which petition shall be served on the Commonwealth's attorney, who shall appear and defend the same. The petition shall allege that he has tendered certain coupons in payment of his taxes, debts and demands, and pray that a jury be empaneled to try whether they are genuine legal coupons, which are legally receivable for taxes, debts and demands. Upon this petition an issue shall be made in behalf of the Commonwealth, which shall be tried by a jury, and either party shall have a right to exceptions on the trial and of appeal to the Circuit Court and Court of Appeals. If it be finally decided in favor of the petitioner that the coupons tendered by him are genuine legal coupons, which are legally receivable for taxes, and so forth, then the judgment of the Court shall be certified to the treasurer, who upon the receipt thereof shall receive said coupons for taxes, and shall refund the money before then paid for his taxes by the taxpayer out of the first money in the treasury, in preference to all other claims.

4. "Whenever any taxpayer shall apply to any Court in this commonwealth for a mandamus to compel any person authorized to receive or collect taxes, debts, or demands due the commonwealth to receive coupons for taxes it shall be the duty of such person to make return to said mandamus that he is ready to receive said coupons in payment of such taxes, debts and demands as soon as they have been legally ascertained to be genuine, and the coupons which by law are actually receivable. Upon such return the Court before whom the application is made shall require the petitioner to pay his taxes to the tax collector of his county or city, or to the treasurer of the commonwealth, and upon filing the receipt for such taxes in such Court the said Court shall direct the petitioner to file his coupons in such Court, which shall then forward the same to the County Court of the county, or Hustings Court of the city where such taxes are payable, and direct such Court to frame an issue between the petitioner, as plaintiff, and the commonwealth, as defendant, as to whether the coupons so tendered are genuine coupons, legally receivable for taxes. On the trial of the cause the attorney for the commonwealth in the lower courts, and the Attorney-General in the Supreme Court of Appeals shall appear for the commonwealth and require proof of the genuineness and legality of the coupons in issue. Either party shall be entitled to exceptions, and an appeal to the Circuit Court and Supreme Court of Appeals on the trial of this

issue. If the decision be finally in favor of the petitioner the mandamus shall issue requiring the coupons to be received for said taxes, and so forth ; and they shall be so received ; and on the certificate of such judgment the treasurer of the commonwealth shall forthwith refund to the taxpayer the amount of currency or money before then paid by him out of the first money in the treasury in preference to all other claims."

Act of Jan. 14, 1882.
(Acts of Va., 1882, Chap. 19.)

Two questions only seem to require discussion here.

First. Was it the legal duty of the defendant to receive the coupons, as demanded by the plaintiff?

Second. If yea, was this a duty enforceable by the writ of *mandamus?*

First. Was it the legal duty of the defendant to receive the coupon in question when tendered for identification and verification?

The act of January 14, 1882—the act considered by this Court in *Antoni vs. Greenhow*, 107 U. S., 769—in terms prescribe the exact course here pursued by the plaintiff in error, namely, (1) a tender of his coupon ; (2) the receipt of the same by the tax officer, giving a receipt therefor, specifying that he has received it " for the purpose of identification and verification ; " (3) the requirement of the taxpayer to pay the tax in money ; (4) the delivery of the coupon by the tax officer to the Judge of the County or Hustings Court ; (5) the liberty to the taxpayer to bring suit against the State, with a trial by jury.

The plaintiff in error here (1) tendered his coupon, (2) paid his tax in money, (3) demanded his receipt as provided for by the act.

No clearer legal duty could exist than the duty of the defendant as a tax officer under the act of January 14, 1882, to receive and receipt for the plaintiff's coupon.

The only justification offered for refusal to receive the coupon here is the provisions of the Act of February 7, 1884, and the 112th section of the Act of March 15, 1884, which are as follows :

Act of Feb. 7, 1884.

"1. Be it enacted by the general assembly of Virginia, that every person or persons, firm, partnership or association, express, telegraph, telephone, and every incorporated company, which now is or may be required to obtain a license in order to do business in this State, desiring to obtain such license, shall make application therefor in writing to the commissioner of the revenue of the county or corporation wherein such business is proposed to be conducted, or to the auditor of public accounts, in such cases as he is authorized by law to issue a license; in which application it shall be stated the nature of the business, the residence of the applicant, the place where it is proposed to conduct such business, the amount of the assessment prescribed by law as a condition precedent to the issuing of any license, *and that such amount accompanies said application in gold or silver coin, United States Treasury notes, or national bank notes*, which application shall be signed by the applicant and filed with the commissioner of the revenue or auditor, as the case may be; but no commissioner of the revenue shall, nor shall the auditor, receive any application for assessment from any person or persons, firm, partnership or company, unless and until the foregoing requirements are strictly complied with.

"2. Upon the receipt by the Commissioner of the Revenue, or auditor, as the case may be, of an application from a person or persons, firm, partnership or company, who have complied with the foregoing section, and actually filed therewith the amount of the assessment in silver or gold coin, United States Treasury or national bank notes, he shall endorse said application as follows: I find the within application in due for, and accompanied with the sum of,
dollars in gold or silver coin, or United States Treasury or national bank notes, to which endorsement he shall sign his name, and file said application in his office, furnishing the applicant with a duplicate copy of the same. If it appears that all the foregoing provisions of this act shall have been complied with, then the Court or person having authority to grant or issue such license may hear the application, and if in due form, may grant such license; provided that in case such application is refused, each refusal shall be endorsed upon said application and the same returned to said applicant, who upon presenting said application, endorsed with such refusal, to the treasurer with whom the deposit has been made, de-

scribed in the first section of this act, said deposit shall be refunded to the applicant.

"3. When an applicant shall have been made and approved, and the amount assessed shall have been received by the proper collecting officer according to the provisions of this act, and his receipt therefor specifying in what currency such payment was made shall be given, then and not until then, shall it be lawful for the Court or person having authority under the law, to grant such license. The order of Court, when the license is obtained in Court, and the license itself, when not obtained in Court, shall specify that the assessment was made according to law, and that the amount assessed had been paid in money or currency, according to the provisions of this act.

"4. *No application for a license to do any business or to follow any profession, trade, or calling in this State, shall be made, and if made, shall not be considered except in pursuance of this act,* and no such license shall be granted unless all requirements of this act shall have been first complied with; and any license granted or obtained in violation of the provisions of this act shall be null and void, and the person or persons, firm or association, joint stock or incorporated company, which may obtain such license, and attempt to do business thereunder, shall be deemed to violate the law, and shall be liable to all the forfeitures, pains and penalties for such violation, and in the same manner as if no such license had been obtained, and in addition thereto, fined not less than fifty dollars, nor more than five hundred dollars."

Acts of Va., 1883-84, pp. 120, 121.

"112. All applications for licenses shall be made, and all taxes assessed by chapter one of this act shall be paid in lawful money of the United States, in the mode and subject to the provisions of an act to regulate the granting of licenses, approved the seventh day of February, eighteen hundred and eighty-four, and any act amendatory thereto, before any corporation, firm or person shall be entitled to receive said license or to transact any business, profession or calling, for which a license is required by chapter one of this act."

Acts of Va., 1883-84, p. 603.

If the license tax required of the plaintiff in error is not payable

by the terms of the coupon contract in coupons, then the acts here presented are a justification to the defendant.

The Act of January 14, 1882, specifies that "whenever any taxpayer or his agent shall tender" any coupons "in payment of any taxes, debts and demands due the Commonwealth," he "shall receive the same," &c.

The plaintiff in error certainly tendered coupons here. The only question is, therefore, under the Act of January 14, 1882, did he tender them "*in payment of any taxes, debts or demands due the Commonwealth?*"

By the Act of 1871, the coupons are made receivable for "all taxes, debts, dues and demands due the State."

It is difficult, indeed, to imagine a plausible argument which would exclude license fees, or the sums required by the State for licenses, from the description of "debts, dues and demands due the State," even if such fees or sums were not to be considered as "taxes." No broader terms could have been employed to include all sums required, in any way or for any purpose, to be paid by the citizen to the State. What form of obligation, exaction or requirement can be conceived of which does not fall under the head of a "debt, due or demand due to the State?"

In *Clarke vs. Tyler*, 30 Gratt., the Court of Appeals of Virginia considered the meaning of the words of the Act of March 30, 1871, "all taxes, debts, dues and demands due to the State." That case arose on a petition of *habeas corpus*. Clarke having been fined for a violation of the law, tendered coupons in payment of his fine. The defendant refused them, and held the petitioner in custody, who thereupon sued out the writ.

The Court of Appeals says:

"This record, therefore, presents for our consideration the single question, whether a fine imposed for a violation of the law can be discharged in coupons or whether it can only be demanded and paid in money?

* * * * * * *

"Adopting, therefore, the principles and reasoning in the case of Antoni vs. Wright, we are left in this case to a single and very narrow inquiry, and that is, are fines imposed for a violation of law included in the purview of the statute?

"One of the principal and universally adopted rules of construc-

tion of statutes is, in respect to the intention of the Legislature, that where the language is explicit the Courts are bound to seek for the intention in the words of the act itself, and they are not at liberty to suppose or to hold that the Legislature intended anything different from what their language imports.

Pot. Dwarris on Statutes, p. 146.

"Words in a statute are never intended to be unmeaning and surplusage, if a construction can be legitimately found which will give force to and preserve all the words in the act. The best rule by which to arrive at the meaning and intention of a law is to abide by the words which the law-maker had used.

Dwarris, p. 179, note.

"Especially is this the case where the words used have no double or doubtful meaning, but are plain and explicit in their signification; for it is a rule of universal application that effect must be given to the words used by the Legislature where there is no uncertainty or ambiguity in their meaning.

"Now, the words used in the act we are called upon to construe are as broad, explicit and comprehensive as any terms which could possibly be used. The act declares that coupons shall be receivable on and after maturity for all taxes, debts, dues and demands due the State." Is there any uncertainty or ambiguity in these terms? They all have a certain definite, explicit and technical meaning. We cannot discard any one of them as unmeaning and surplusage, but must, according to the rules of construction which bind the Courts, give effect to all. We must suppose the Legislature knew the ordinary meaning and force of the words they used. If the provision of the act had been that these coupons should be receivable "for all taxes and debts due the State," there might be some room for doubt where fines were embraced; for although fines are recoverable by action of debt, and in a certain sense a fine is a debt due the State, yet it might be said with much force, if not conclusively, that the word debt refers to matter of contract, and that, therefore, a fine is not embraced in the meaning of the statute in the word debt. But the words "dues and demands" are added. Shall we give no effect to these words of explicit meaning? Can we take the liberty of striking these words out of the statute? If we can, then the Courts may override the powers of the Legislature and construe away any act it may pass. These words, dues and demands, are not uncertain and ambiguous, but have a certain, definite and explicit meaning. The

word "due" is defined by Webster to be "that which is owed, "that which custom, statute or law requires to be paid," and by Worcester, "that which any one has a right to demand, claim or possess," "that which can justly be required." The word demand is a word of still larger significance and more comprehensive meaning. Indeed, Lord Coke says the word demand is the largest word in the law except claim. In 2 Coke upon Littleton, 291, b., he says, "Demandum is a word of art, and, in the understanding of the common law, is of so large an extent as no other word in the law is unless it be clamum, whereof Littleton maketh mention. Section 445." Webster defines demand "the asking or seeking what is due or claimed to be due." No words of more explicit or broader signification could have used than these two words, "dues and demands." We cannot discard them, but must give them effect. Do they embrace fines? I am bound by every rule of construction that they do. A fine is something "which the law requires to be paid," and that is the meaning of the word "dues." A fine is a thing "due or claimed to be due" to the State; a liability which the State has a right to enforce and demand, and that is the meaning of the word "demand." I am, therefore, of opinion that fines are clearly embraced within the meaning and the very words of the statute. The Legislature has used words which, by their explicit comprehensive and unmistakable meaning, embrace fines as well as taxes and debts. If, after using the words "dues and demands," they had intended to exclude fines, how easy it would have been to have added the words "except fines" after the words "dues and demands." But, having used those broad and comprehensive terms, which, by their common and explicit meaning, embrace fines, and have used no words of exception, it follows upon every rule of construction that fines are embraced in the terms "dues and demands."

But license fees or assessments are "taxes" in the legal and proper sense of that term.

In Brown vs. Maryland, 12 Wheat, 419, the question was whether a Maryland act, requiring all importers of foreign goods by the bale or package, &c., to take out a license of $50, was repugnant or not to the Constitutional provision that "no State shall, without the consent of Congress, lay any impost or duty on imports or exports, except what may be absolutely necessary for executing its inspec-

tion law," and the provision that Congress shall have power "to regulate commerce with foreign nations, among the several States, and with the Indian tribes."

Chief Justice MARSHALL held, first, that "an impost, or duty on imports, is a custom or a tax levied on articles brought into a country," and, second, in answer to the argument that a license required of the importers is not a tax on articles imported, but on the person, he says, "It is impossible to conceal from ourselves that this is varying the form without varying the substance. It is treating a prohibition, which is general, as if it were confined to a particular mode of doing the forbidden thing. All must perceive that a tax on the sale of an article, imported only for sale, is a tax on the article itself. It is true the State may tax occupations generally, but this tax must be paid by those who employ the individual, or is a tax on his business."

In Ward vs. Maryland, 12 Wall., 418, this Court says of a license exacted by a Maryland statute, which required a non-resident, under penalty, to obtain a license of $300 to sell goods within the State, the same not being required of residents of Maryland, that such an exaction, called by what name it may be, is a tax upon the goods or commodities sold, as the seller must add to the price to compensate for the sum charged for the license, which must be paid by the consumer or by the seller himself, and in either event the amount charged is equivalent to a direct tax upon the goods or commodities.

In Welton vs. Missouri, 91 U. S., 275, 279, it was held that a license exacted by the State of Missouri from dealers in goods must be regarded as a tax upon the goods themselves.

In *Moore vs. Greenhow*, 114 U. S., 338, *mandamus* was sought and was refused by this Court.

It is only necessary to examine this case to see that it does not control the present case.

In *Moore vs. Greenhow* the plaintiff in error prayed a rule *nisi* in *mandamus* commanding the treasurer to show cause why a peremptory *mandamus* should not issue to compel him to issue to him a certain certificate, provided for by the statute of Virginia, stating that he had made the deposit required by the statutes in payment of the license for which he had applied. The alleged deposit had

been made in coupons, while the statute required it to be made in money, and forbade the receipt of coupons therefor.

This Court says, p. 339: "This being a case in which, by *mandamus*, the plaintiff in error seeks to compel the officers of the State of Virginia *specifically to receive coupons instead of money in payment of license taxes*, it comes within the exact terms of the decision of a majority of this Court in *Antoni vs. Greenhow*, 107 U. S., 769, according to which the plaintiff in error is remitted to the remedy provided by the Act of January, 14, 1882."

The present plaintiff in error, as has been pointed out, does not seek to compel the receipt of coupons in payment of his license by this *mandamus;* he seeks only to compel the State officer to give him such a receipt as is specifically provided for in the Act of January 14, 1882, in order to enable him to obtain the *remedy provided by that act;* nothing more.

If he cannot obtain this action on the part of the tax officer, then he will be deprived of the right to bring his suit to recover the *money paid for his license.*

Second. If it is the legal duty of the defendant to give the receipt here demanded, is this duty enforceable by the writ of *mandamus?*

It is certainly not apparent what objection can be plausibly urged against the form of remedy here sought.

(1) A clear legal duty rests on the defendant—a duty not to any extent or degree discretionary; (2) in the performance of this duty by the defendant, the plaintiff in error is directly interested, and (3) he has no other remedy to enforce performance of this duty.

Do not these features distinguish a case for the application of the writ of *mandamus?*

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